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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Deployment of Wireline Services Offering  
Advanced Telecommunications Capability

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CC Docket No. 98-147

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COMMENTS OF  
TELEHUB NETWORK SERVICES CORPORATION

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Russell M. Blau  
Patrick Donovan  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
(202) 424-7500

Dated: September 25, 1998

Counsel for TeleHub Network Services  
Corporation

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## SUMMARY

TeleHub Network Services Corporation (“TNS”) supports the Commission’s efforts in this proceeding to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans,” pursuant to Section 706 of the Telecommunications Act of 1996 (“1996 Act”).<sup>1</sup> TNS believes that the Commission is most likely to achieve the goals of Section 706 by encouraging the provision of new competitive services and technologies, such as those provided by TNS and other innovative companies, that can bring advanced services to consumers and businesses. TNS strongly supports the Commission’s proposals in this proceeding to strengthen collocation and unbundling requirements. These measures will greatly facilitate the ability of new entrants to provide advanced services. TNS does not support the Commission’s proposal to permit incumbent LECs to establish separate unregulated affiliates for provision of advanced services. TNS questions whether the proposed scheme of unregulated affiliates is lawful under the 1996 Act.

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<sup>1</sup> Pub. L. 104-104, Title VII, Sec. 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. Sec. 157.

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**COMMENTS OF  
TELEHUB NETWORK SERVICES CORPORATION**

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TeleHub Network Services Corporation ("TNS") respectfully submits the following comments in response to the Notice of Proposed Rulemaking issued in this proceeding concerning the deployment of advanced telecommunications capability to all Americans.<sup>2</sup>

TNS was formed in 1996 to capitalize on the demand for advanced network features and capabilities resulting from the telecommunications industry's changing competitive and regulatory environment envisioned by the Telecommunications Act of 1996 ("1996 Act").<sup>3</sup> TNS is a provider of wholesale long distance services using Virtual Access Services Platform ("VASP™") technology over an Asynchronous Transfer Mode ("ATM") backbone network. VASP™ is proprietary software developed by the TNS family of companies<sup>4</sup> that enables telecommunications service

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<sup>2</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188, released August 7, 1998 ("Section 706 NPRM").

<sup>3</sup> Pub. L. 104-104, Title VII, Sec. 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. Sec. 157.

<sup>4</sup> TNS is a subsidiary of TeleHub Communications Corporation whose other principal subsidiary is TeleHub Technologies Corporation (TTC). TTC develops commercial applications of VASP™.

providers to (i) integrate the delivery of voice, video and data over a single platform; (ii) seamlessly interconnect with the public switched telephone network ("PSTN"); (iii) provide real-time monitoring of telecommunications traffic; and (iv) facilitate the unbundling of the local loop. ATM is a very high speed network transmission technology that allocates bandwidth on demand making it suitable for high-speed connection of voice, data, and video services. Because of the inherent efficiencies in carrying voice traffic over an ATM backbone using VASP,<sup>TM</sup> TNS is able to offer switched wholesale voice services at rates generally lower than those currently offered by competing wholesale service providers. TNS's VASP<sup>TM</sup>-enhanced network is the only publicly-switched ATM network in commercial operation that allows for seamless interconnection with the PSTN without requiring additional telephone equipment or modified dialing procedures.

TNS currently provides service to switchless resellers and estimates that its reseller customers will serve approximately one million presubscribed lines by 1999. TNS will also offer wholesale long distance services to ILECs, CLECs and international carriers terminating traffic in the United States in the near future. TNS's network directly reaches approximately 64% of the telephone exchanges in the United States and reaches the remaining 36% through contractual relationships with other carriers.

**I. THE PROPOSED SCHEME OF UNREGULATED INCUMBENT LEC AFFILIATES IS NOT CONSISTENT WITH THE ACT AND COULD THREATEN COMPETITION**

Section 706 of the 1996 Act directs the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." In the *Section 706 NPRM*, the Commission proposes to further this goal by proposing to permit incumbent local exchange carriers (LECs) to establish separate wholly-owned affiliates that would be able to

provide advanced services on an unregulated basis free from the interconnection, unbundling, collocation, and resale obligations otherwise applicable to incumbent LECs under Section 251(c) of the Communications Act of 1934, as amended.<sup>5</sup> The Commission reasons that provision of advanced services by an affiliate that (1) satisfies adequate structural separation requirements (*i.e.* is “truly” separate); and (2) acquires, on its own, facilities used to provide advanced services (or leases such facilities from an unaffiliated entity) would not meet the statutory definition of an incumbent LEC and would not be a “successor or assign of an incumbent LEC and would not, therefore, be subject to the obligations of Section 251(c).<sup>6</sup>

TNS questions whether Congress could have intended to establish a mechanism for incumbent LECs to evade the key market opening provisions of the 1996 Act. While it was necessary to establish a definition of incumbent LEC in the 1996 Act in order to identify the entities

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<sup>5</sup> 47 U.S.C. Section 251(c).

<sup>6</sup> *Section 706 NPRM* at para. 92. Section 251(h) of the Act defines incumbent local exchange carrier as follows:

(h) DEFINITION OF INCUMBENT LOCAL EXCHANGE CARRIER.--

(1) DEFINITION.-- For purposes of this section, the term “incumbent local exchange carrier” means, with respect to an area, the local exchange carrier that—

(A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and

(B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission’s regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i)

47 U.S.C. Sec. 251(h)(1)

that would be subject to Section 251(c) obligations, there is no indication in the statute or its legislative history that Congress intended thereby to undermine the key regulatory initiatives of the 1996 Act by permitting incumbent LECs to build the networks of the future free from Section 251(c) obligations. TNS questions whether the proposed scheme of unregulated affiliates is lawful under the 1996 Act.

In addition, TNS is concerned that the relationships between the incumbent LEC and its advanced services affiliate under consideration by the Commission could pose a significant threat to competition. Rather than propose an affiliate that would be analogous to competitive LECs that are truly independent from incumbent LECs, the Commission proposes a special relationship between the incumbent and the affiliate that would bestow on the affiliate many of the benefits of incumbency to the disadvantage of new entrants.

Thus, while ostensibly proposing a “truly” separate affiliate, in reality the Commission is considering allowing significant transfers of key communications and other assets to the affiliate that would give the affiliate a significant competitive advantage. Apparently, transfers of facilities that are, or could be, unbundled network elements (UNEs),<sup>7</sup> network equipment necessary to provide advanced services, communications equipment for the purpose of testing new services,<sup>8</sup> and assets other than communications facilities including customer proprietary network information (CPNI), customer accounts, employees, and brand names<sup>9</sup> are all within the scope of the *Section 706*

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<sup>7</sup> *Section 706 NPRM* at para. 106.

<sup>8</sup> *Section 706 NPRM* at para. 112.

<sup>9</sup> *Section 706 NPRM* at para. 113.

NPRM.<sup>10</sup> Indeed, the Commission appears to have tentatively ruled out only wholesale transfers of loops<sup>11</sup> and incumbent central offices.<sup>12</sup> Further, the Commission is considering allowing the incumbent to leave some or all of any such “transferred” equipment in place,<sup>13</sup> and engage in joint marketing insofar as the affiliate is able to use customer proprietary network information gathered by the incumbent.<sup>14</sup>

TNS believes that permitted relationships of this sort would inherently impose a significant threat to competition. If the Commission chooses to go forward with some variation of its separate affiliate proposal, it should adopt far more stringent safeguards than those now being considered.<sup>15</sup> The Commission should only permit the incumbent to transfer minimal start-up capital to the affiliate and then should be required to transfer ownership of the affiliate directly to its stockholders in the same way that AT&T recently broke itself into three separate corporations. The new company

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<sup>10</sup> Section 706 NPRM at para. 108.

<sup>11</sup> Section 706 NPRM at para. 107.

<sup>12</sup> Section 706 NPRM at para. 113.

<sup>13</sup> Section 706 NPRM at para. 110.

<sup>14</sup> Section 706 NPRM at para. 106.

<sup>15</sup> The Commission has long recognized the need for stringent safeguards for incumbent LECs’ provision of services on an unregulated basis. *See e.g., Amendment of Section 64.702 of the Commission’s Rules and Regulations (Computer III)*, Report and Order, CC docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Phase I Recon. Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Phase I Further Recon. Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Recon.*), *Phase I Order and Phase I Recon. Order, vacated, California v. FCC*, 905 F.2d 1217 (9<sup>th</sup> Cir. 1990) (*California I*); Phase II, 2 FCC Rcd 3072 (1987) (*Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Phase II Recon. Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Recon. Order*), *Phase II Order vacated, California I*, 905 F.2d 1217 (9<sup>th</sup> Cir. 1990); *Computer II Remand Proceedings*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*).



could then seek to raise additional funding and acquire needed personnel and facilities in the same way as other CLECs.

The Commission has also in many instances applied more stringent safeguards to the Bell Operating Companies (BOCs) and GTE. If the Commission adopts some variation of its separate affiliate proposal, the Commission should additionally establish a preapproval process at least for any affiliate of the BOCs or GTE. The Commission should require the incumbent to submit a complete plan for establishing the affiliate including proposed asset transfers, marketing plans, and a capitalization plan, with an opportunity for public comment.<sup>16</sup> This approach is the minimum necessary to provide any degree of assurance that the incumbent's separate affiliate will not undermine the pro-competitive goals of the 1996 Act.

## **II. BETTER REGULATORY OPTIONS ARE AVAILABLE TO THE COMMISSION TO PROMOTE PROVISION OF ADVANCED COMMUNICATIONS CAPABILITY TO ALL AMERICANS**

As noted, TNS was formed to meet the demand for advanced network features and capabilities resulting from the new environment of competition envisioned and sought to be achieved by the 1996 Act. TNS's subscribers already serve nearly one million customers. Moreover, TNS's innovative network technologies, when fully deployed, will permit its customers

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<sup>16</sup> In its *Computer II* regulatory regime the Commission established prior approval procedures for provision of enhanced services by separate affiliates of AT&T and GTE. *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC 2d 384, ¶ 260 (1980) (*Computer II Final Decision*), *recon.*, 84 FCC 2d 50 (1980) (*Reconsideration Order*), *further recon.*, 88 FCC 2d 512 (1981) (*Further Reconsideration Order*), *affirmed sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983). See also *In the Matter of American Information Technologies Corp., BellSouth, NYNEX; Interim Capitalization Plans for the Furnishing of Customer Premises Equipment and Enhanced Services (Centrex Sales Agent Order)*, 98 F.C.C.2d 943 (1984).

to offer integrated voice, video, and data services on a single switched network and enable the provisioning of on-demand high bandwidth services, such as video on demand. Other innovative companies are also moving forward with aggressive plans to provide advanced telecommunications capabilities to consumers and businesses.

TNS urges the Commission, instead of its legally questionable and potentially anticompetitive proposal to let incumbent LECs to offer advanced services on deregulated basis, to promote the provision of advanced services to all Americans by continuing to strengthen and implement the key market opening provisions of the 1996 Act. Such measures would strengthen the ability of TNS, its customers, and other technologically innovative companies to successfully offer the advanced services that Congress in Section 706 of the 1996 has directed the Commission to encourage. Such measures would be fully consistent with the 1996 Act and would not entail the risks to competition engendered in the current proposal.

### **III. STRENGTHENED COLLOCATION AND UNBUNDLING REQUIREMENTS**

TNS strongly supports the collocation and unbundling obligations proposed by the Commission in this proceeding as a preferable regulatory alternative to promote the provision of advanced services to all Americans. These proposals would strengthen the ability of new entrants to take advantage of the opportunities to provide competitive advanced services as intended in the 1996 Act.

TNS strongly supports the Commission's proposal to adopt national standards for provision by incumbent LECs of collocation and unbundled loops.<sup>17</sup> Adoption of national standards would

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<sup>17</sup> *Section 706 NPRM* at 123.

encourage the deployment of advanced services by increasing predictability and certainty, and by facilitating entry by competitors operating in several states. The Commission should adopt strengthened collocation and unbundling rules regardless of whether incumbent LECs choose to establish an advanced services affiliate. This would promote the provision of advanced services and of competitive services generally notwithstanding whatever choice incumbent LECs make concerning their own provision of advanced services.

TNS additionally makes the following recommendations concerning strengthened collocation and unbundling requirements.

- All Communications Equipment Should Be Eligible for Collocation. The ability of new entrants to collocate any type of equipment, including packet or circuit switches and Digital Subscriber Line Multiplexers (DSLAMs), would facilitate their ability to provide advanced services.
- Cageless Collocation. The Commission should require incumbent LECs to offer cageless collocation as an option that competitive LECs may elect. This would afford new entrants a potentially lower cost and more efficient way to collocate in incumbent central offices. The Commission should establish standards and procedures for ordering cageless collocation.
- Disclosure of Available Space for Collocation. The Commission should require incumbent LECs to publish on their Web pages space available for collocation in every central office. This would provide a ready way for competitive LECs to find out if space is available for collocation and would avoid current delays in obtaining such information from incumbents.
- Elimination of Space Constraints. The Commission should require incumbent LECs to make unused space in central offices available for collocation. This would go a long way in ameliorating space shortages.
- Cost Allocation Rules for Up-Front Space Preparation Charges. The Commission should establish rules that assure that charges for conditioning central office space are just and reasonable and that provide that each collocating carrier pays only its reasonable share of the costs of space preparation charges even if portions of the conditioned space are not currently occupied by competing carriers.

- Direct Optical Interconnection. The Commission should require incumbent LECs to offer direct optical interconnection to collocating carriers. Optical connection is more space efficient and less costly than electrical connection and is a standard industry practice.
- Conditioned Loops. The Commission should require incumbent LECs to provide “conditioned” loops, *i.e.* loops that are free of bridge taps, load coils, and midspan repeaters, on request. Without adequately conditioned loops, new entrants will be unable to provide advanced services.
- Uniform Standards for Attachment of Electronic Equipment at the Central Office. The Commission should adopt its proposal to establish uniform, national standards for attachment of electronic equipment at the central office.<sup>18</sup> Such standards would promote the ability of competitive service providers to interconnect to incumbent facilities in the central office.
- Sub-Loop Unbundling. The Commission should extend loop unbundling requirements to sub-loop elements, such as by access to feeder cable, portions of loops, and remote terminals.<sup>19</sup> In many situations, such as where a loop is provisioned by means of a digital loop carrier (DLC) system at the central office or where there is insufficient collocation space at the central office, subloop unbundling may be the only feasible way for a CLEC to access the loop in order to provide advanced services.
- Effective Oversight of Ordering and Provisioning of Collocation and Unbundling. The Commission should establish detailed standards and procedures applicable to incumbent LECs concerning pre-ordering, ordering, and provision of collocation and unbundled network elements including permissible time limits within which incumbent LECs must respond to CLEC requests for information, interconnection, and associated services. CLECs efforts to provide competitive services are frequently thwarted by incumbent’s delays in providing collocation and unbundled network elements. The Commission should establish mechanisms by which CLECs may obtain timely and effective enforcement of collocation and unbundling requirements.

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<sup>18</sup> Section 706 NPRM at para. 163; 47 C.F.R. Part 68. Customers already have a right to connect equipment to the public switched telephone network in ways that are privately beneficial with being publically detrimental. *Hush-A-Phone Corp. v. United States*, 238 F.2d 266 (D.C. Cir. 1956).

<sup>19</sup> Section 706 NPRM at para 173.

#### IV. LIMITED INTERLATA RELIEF

TeleHub does not support the possibility of “limited” interLATA relief to enable the Bell Operating Companies to extend facilities across LATA boundaries in order to access nodes on the Internet. Given the express provision in Section 271(a) of the Act that a Bell Operating Company may not provide interLATA service except as provided in that section, the Commission may not grant requests for interLATA entry by means of redefining LATAs under Section 3(25). This would unlawfully subvert the express language and intent of Section 271. While the Commission has exercised its authority under Section 3(25) to approve changes to LATA boundaries, it has only done so for limited reasons, such as to permit independent telephone companies to route traffic through a BOC LATA other than the one with which they are currently associated,<sup>20</sup> or to permit expanded local calling service between communities that lie on different sides of existing LATA boundaries,<sup>21</sup> not to grant requests for interLATA entry. Moreover, the Commission has recognized that it can authorize changes in LATA boundaries only where this would not reduce a BOC’s incentive under Section 271 to open its market to competition.<sup>22</sup> Accordingly, the Commission should not adopt this proposal.

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<sup>20</sup> *Petitions for LATA Association Changes by Independent Telephone Companies*, CC Docket No. 96-158, Memorandum Opinion and Order, 12 FCC Rcd 10529 (1997).

<sup>21</sup> *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations*, CC Docket No. 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646 (1997).

<sup>22</sup> *Petitions for LATA Association Changes by Independent Telephone Companies*, supra, para. 10; *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations*, supra, para. 14.

## V. CONCLUSION

TNS respectfully requests the Commission to encourage the provision of advanced telecommunications capability to all Americans by seeking to vigorously enforce and implement the key market opening provisions of Section 251 of the Act. TNS supports the proposed strengthened collocation and unbundling obligations because they will facilitate the provision of advanced services by new market entrants. TNS requests that the Commission not adopt its proposal to permit incumbent LECs to provide advanced services through an unregulated separate affiliate. This proposal is not envisioned by the 1996 Act and would permit incumbents to harm competition by favoring their advanced services affiliates. The Commission's proposal to alter LATA boundaries to permit BOCs to more readily access Internet nodes exceeds the Commission's authority under the Act.

Respectfully submitted,



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Russell M. Blau  
Patrick Donovan  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
(202) 424-7500

Dated: September 25, 1998

Counsel for TeleHub Network Services  
Corporation

## **CERTIFICATE OF SERVICE**

I, Ivonne Diaz, hereby certify that on this 25th day of September 1998, copies of the foregoing Comments of TeleHub Network Service Corporation were hand delivered to the parties listed below.

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Janice M. Myles (1 + disk)  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 539-A  
Washington, D.C. 20554

International Transcription Service  
1231 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20554

Chairman William E. Kennard  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

John Nakahata  
Chief of Staff  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

Thomas Power  
Legal Advisor  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W.  
Room 832  
Washington, D.C. 20554

James L. Casserly  
Senior Legal Advisor  
Federal Communications Commission  
1919 M Street, N.W.  
Room 832  
Washington, D.C. 20554

Harold Furchtgott-Roth  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W.  
Room 802  
Washington, D.C. 20554

Kevin J. Martin  
Legal Advisor  
Federal Communications Commission  
1919 M Street, N.W.  
Room 802  
Washington, D.C. 20554

Michael K. Powell  
Commissioner Federal Communications  
Commission  
1919 M Street, N.W.  
Room 844  
Washington, D.C. 20554

Kyle D. Dixon  
Legal Advisor  
Federal Communications Commission  
1919 M Street, N.W.  
Room 844  
Washington, D.C. 20554

Goria Tristani  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W.  
Room 826  
Washington, D.C. 20554

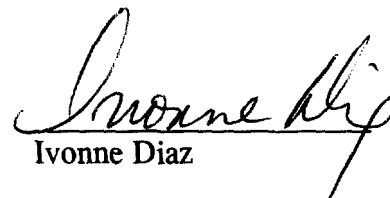
Paul Gallant  
Legal Advisor  
Federal Communications Commission  
1919 M Street, N.W.  
Room 826  
Washington, D.C. 20554

Kathryn Brown  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 500  
Washington, D.C. 20554

Larry Strickling  
Federal Communications Commission  
1919 M Street, N.W.  
Room 500  
Washington, D.C. 20554

Carol Matthey  
Chief, Policy Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 544  
Washington, D.C. 20554

Jordan Goldstein  
Policy Division  
Common Carrier Bureau Federal  
Communications Commission  
1919 M Street, N.W.  
Room 544  
Washington, D.C. 20554



Ivonne Diaz